

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

DAVID SPAHR,

Plaintiff,

- against -

SALEM BOTANICALS CORPORATION

Defendant.

Docket No.

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff David Spahr (“Spahr” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Salem Botanicals Corporation (“Salem” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of two copyrighted photographs of mushrooms on the bark of a tree, owned and registered by Spahr, a professional photographer. Accordingly, Spahr seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New Jersey.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

## **PARTIES**

5. Spahr is a professional photographer in the business of licensing his photographs having a usual place of business at 16 Nelson Ridge Road, Washington, Maine 04574.

6. Upon information and belief, Salem is a corporation duly organized and existing under the laws of the State of New Jersey, with a place of business 100 Central Schoolhouse Road, Carneys Point NJ 08069. Upon information and belief Salem is registered with the New Jersey Department of State Division of Corporations to do business in the State of New Jersey.

## **STATEMENT OF FACTS**

### **A. Background and Plaintiff's Ownership of the Photographs**

7. Spahr photographed mushrooms on the bark of trees (the "Photographs"). True and correct copy of the Photographs are attached hereto as Exhibit A.

8. Spahr is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with the United States Copyright Office and were given registration number VA 1-906-783 and VA 1-906-809.

### **B. Defendant's Infringing Activities**

10. Salem copied the Photographs and placed in them on their products (the "Products").

11. For example, Salem placed the Photographs on their Chaga Tea and Chaga Oil product packaging. See Exhibit B.

12. Salem sold the Products on their website and on third party websites. See Exhibit C.

13. Salem did not license the Photographs from Plaintiff for its Products, nor did Salem have Plaintiff's permission or consent to publish the Photographs on its Products.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Salem infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on its Products. Salem is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Defendant have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Salem be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Clifton, New Jersey  
January 3, 2019

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